

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UBALDO ROMERO,

:

Petitioner,

:

08 Civ. 8380 (CM) (HBP)

-against-

:

OPINION
AND ORDER

DAVID NAPOLI, Superintendent
for Southport Correctional
Facility,

:

:

Respondent.

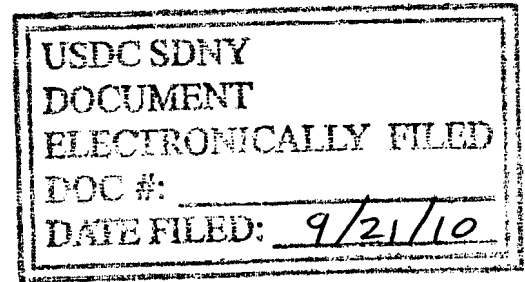
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PITMAN, United States Magistrate Judge:

By a Notice of Motion dated January 25, 2010 (Docket Item 39), petitioner seeks the appointment of counsel and the appointment of an expert witness. For the reasons set forth below, the motion is denied without prejudice.

This is petitioner's third motion for the appointment of counsel; the two prior motions were denied without prejudice. Romero v. Napoli, 08 Civ. 8380 (CM) (HBP), 2010 WL 1227459 (S.D.N.Y. May 5, 2009); Romero v. Napoli, 08 Civ. 8380 (CM) (HBP), 2009 WL 212415 (S.D.N.Y. Jan. 29, 2009). Those decisions set forth the standards applicable to a motion for the appointment of counsel in a habeas corpus proceeding, such as this one, and they also explain why petitioner has not made an adequate showing here




to warrant the appointment of counsel. Familiarity with those decisions is assumed

Petitioner's current application does not remedy the deficiencies in his prior applications. Although petitioner claims in a conclusory manner that fabricated evidence was used against him, he cites nothing to establish that the evidence was in fact fabricated. Cf. Miller v. Pate, 386 U.S. 1 (1967) (murder conviction overturned where prosecution referred an article of clothing in evidence as blood-stained when, in truth, the clothing was stained with paint). In short, the motion is long on argument and conclusions, but short on facts.

Accordingly, petitioner's motion for the appointment of counsel and the appointment of an expert witness (Docket Item 39) is denied without prejudice to renewal.

Dated: New York, New York
September 21, 2010

SO ORDERED


HENRY PITMAN
United States Magistrate Judge

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